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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of the Czech Republic

Addendum

Information received from Czechia* on follow-up to the concluding observations**

[Date received: 23 August 2016]

1. On 31 March and 1 April 2015 the UN Committee on the Rights of Persons with Disabilities considered, within its thirteenth session, the Initial Report of the Czech Republic on Measures Taken to Give Effect to its Obligations under the Convention on the Rights of Persons with Disabilities.

2. On 10 April 2015 the Committee adopted, concerning the Initial Report of the Czech Republic, its concluding observations and at the same time requested the Czech Republic to submit information in writing on the measures adopted in order to meet the recommendations set out in paragraphs 32 and 37 within 12 months.

3. Herewith the Czech Republic sends its written replies on the implementation of relevant recommendations to the Committee.

As for Recommendation No. 32

4. The use of restrictive means in health facilities in the Czech Republic is being dealt with in the long term. The Ministry of Health pays a close attention to the use of restrictive means on persons with psychosocial disability with regard to the protection of their human rights and patients' dignity.

5. Nevertheless, there are some cases in which the use of restrictive means is necessary from the medical point of view, in order to protect the health and the life of patients and people around. Due to this reason, extraordinary care has been given to process of setting system changes that would ensure the use of restraints only in cases in which no other method is effective.

6. The use of restrictive means in health facilities in the Czech Republic is regulated by § 38 of the Act No. 372/2011 Coll. on medical services and terms of their provision (hereinafter only as "The Act on Medical Services") that entered into force on 1 April 2012.

* Since 17 May 2016, "Czechia" has replaced "Czech Republic" as the short name used in the United Nations.

** The present document is being issued without formal editing.

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7. According to the Act on Medical Services, the restrictive means can only be used in order to avert imminent danger to life, health or safety of the patient or other persons and this only for the period during which these reasons persist. The restraining of the patient is indicated for example in the situation when there are serious symptoms endangering the close surroundings such as psychomotor agitation or brachial aggression or when there are symptoms of self-harm or auto-aggression for example inadequate intake of liquids, swallowing of indigestible objects or suicidal behaviour. The restraining of a patient can also be used in case when the patient does not follow the necessary arrangements in case of serious infection disease.

8. The restrictive means must not be used as punitive measures against patients.

9. The use of restrictive means can be prescribed only by the doctor; only in very exceptional cases requiring the immediate intervention can the present medical staff of non-medicine profession prescribe the use of limiting means; the doctor must be immediately informed on the use of restrictive means and must confirm the justification for restrictions.

10. The patient being restrained is, with regard to his/her health condition, clearly informed about the reasons for the use of restrictive means.

11. Every use of restrictive means must be recorded in the medical records of the patient.

12. Additional restraining of the patient who was hospitalized based on his/her free consent must be notified to the court by the provider of medical services within 24 hours. The restraining of the patient does not have to be notified to the court if the patient has given his consent additionally within the period of 24 hours and in a conclusive manner.

13. The Ministry of Health has prepared an amendment of the Act on Medical Services that also includes the changes in the area of use of restraints. It is newly established, that the restrictive means can be used only after a less strict procedure failed, except for such case in which the use of less strict procedure would not be able to avert the imminent danger to life, health or safety of patient or other persons whereas such less strict procedure has to be used in situation that corresponds to the purpose of its use.

14. The mentioned amendment to the Act on Medical Services includes a new obligation regarding the use of restrictive means by medical services providers. It consists of keeping of central records on the use of restrictive means that contain the summary information of cases in which they were used in calendar year. Each restrictive mean has to be recorded separately. The identification data of patients on whom the restrictive means were used is not to be part of these central records.

15. In 2009, the Ministry of Health published in its Journal (part 7) a detailed methodological instruction concerning the use of restrictive means in health facilities of the Czech Republic.

16. Currently, the Ministry of Health is preparing a new methodological instruction that is, among others, based on recommendations presented by the Public Defender of Rights in her report on the care in psychiatric institutions and on the use of restrictive means as well as on recommendations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

17. In July 2015, the Ministry of Health initiated the preparation of this new methodological instruction on the use of restrictive means in health facilities in the Czech Republic. Its publication should be related to the above mentioned amendment to the Act on Medical Services. The Ministry of Health has mapped practice in directly subordinated institutions whether they follow the guidelines for the use of restrictive means and what means they use. It was found that most of health facilities deal with this issue very carefully and regulate it by their internal codes.

18. Following information thus obtained, a proposal of adaptation of the methodology was prepared — The Use of Restrictive Means on Patients in Health Facilities of the Czech Republic. The proposal was consulted with professionals — doctors and medical personnel. A preliminary version of this methodological instruction was presented at the turn of 2015-2016 to professional medical organizations for their comments — to the Psychiatric Association ČLS JEP, to the Czech Gerontology and Geriatric Association ČLS JEP and to

the professional organization of general nurses -- to the Czech Association of Nurses. Those professional associations have presented their recommendations and comments. They are being evaluated. By the end of June 2016 the Ministry of Health will organize a round table that will include also a representative of the Office of the Public Defender of Rights.

19. Originally, the issue of the new methodological instruction was to be connected to the entry into effect of the above mentioned amendment to the Act on Medical Services. However, due to delay in the legislative process of the amendment, it was decided that the methodological instruction will come into force after the evaluation and broad discussion at the round table, i.e. in the second half of 2016 at the latest.

20. With regard to the proposal of the new methodological instruction, possible division of restrictive means has also been discussed, in particular to handle separately the use of pharmacotherapy (as per the proposal: psychopharmacologic drugs or possibly other medicinal products given by parenteral administration in order to limit the free movement of patient against his/her will during provision of medical services unless the treatment is provided on the patient's request or within the continuous treatment of a psychiatric disease). The pharmacotherapy is mostly used as a medical means that is aimed to influence the basic disease which — if not treated — can cause the situations in which the use restrictive means is necessary.

21. In addition, the methodological instruction intends to establish the maximum duration of the continuous limitation and the frequency of control of vital functions, state of consciousness, patient's behaviour and the occurrence of complications ensuing from the limitation. During the limitation neither any painful grips nor any other inhumane procedures can be used: the dignity and the privacy of patient must be protected. The patient shall be protected from undesirable contact with other patients. The providers of medical services are obliged to submit annual report on the use of restrictive means, possible complications and on the staff training in particular workplaces as well as in the whole facility.

22. Inspection of use of restrictive means in individual providers of medical services is mainly done by the relevant administrative body, i.e. by regional authorities. The way the inspections are carried out is governed by relevant legal regulations (the Act on Medical Services, Regulation No. 99/2012 Coll., Regulation No. 92/2012 Coll., Act No. 255/2012 Coll. on Inspection (the Inspection Code)), and by methodological instructions of the Ministry of Health. The new methodological instruction will be of use as a tool for such inspections.

23. The Czech government approaches the issue of persons with severe mental disorders, in a comprehensive manner in order to prevent situations in which it is necessary to use the restrictive means so that such means are used rarely and only in the necessary extent. In October 2013, the Strategy for Psychiatric Care Reform (hereinafter only referred to as "Strategy") was adopted to ensure a system change in care provision to promote as a matter of priority the care of patients in their natural environment. One of the aims is to timely diagnose a disease and therefore to treat the persons with serious psychiatric disorders in a timely manner. Such care should decrease the need for institutional care which itself is a limitation of the patients' free movement.

24. Through the implementation of the Strategy the Ministry of Health intends to remove deficits mentioned by international organizations and thus ensure the full enjoyment of human rights by all persons with mental disorders.

25. The Strategy defines specific goals as follows:

(a) To increase the quality of psychiatric care through the system change of its organization.

(b) To work towards the destigmatisation of persons with mental disorders and of the psychiatry in general.

(c) To increase the clients' satisfaction with the provided psychiatric care.

(d) To increase the efficiency of the psychiatric care by timely diagnostics and identification of unrevealed psychiatric diseases.

(e) To increase the success rate of full inclusion of persons with mental disorders in the society (in particular to improve conditions for employment, education, housing etc.).

(f) To improve the connection between health, social and other related services.

(g) To humanise the psychiatric care.

26. The efforts to meet the targets set by the Strategy continue within the so-called implementation stage. More detailed work is being done regarding how to carry out the reform in the Czech Republic. The necessary changes reflect the basic goals of the Strategy, i.e. the emphasis is given to the destigmatisation, humanisation of care, respect to patients' needs, improvement of quality and availability of care. Within the Strategy implementation as well as its transition stage, intensive education on the mental health is envisaged designed for staff in health as well as other sectors. Such activities will also result in reduction of restrictive means use.

27. The restrictive means are also used in other European states.[1] The Czech Republic cannot prohibit their use in psychiatric institutions completely, as there are no alternative options in cases when it is necessary to avoid the immediate danger to life, health or safety of the patient or other persons. We are well aware of the gravity of this issue and make all steps in order to prevent abuse or excessive use of these means in practice, namely through amendments to legislation, provision of methodology and inspection of providers of medical services.

As for Recommendation No. 37

28. The Ministry of Health states that in the Czech Republic no sterilization can be performed without the patient's informed consent. Furthermore, the requirement of the patient's written informed consent was stipulated in instructions that regulated the sterilisation in the past.

29. Currently, the conditions for performing sterilizations are set in Act No. 373/2011 Coll. on specific medical services (hereinafter only as the "Act on Specific Medical Services") that is effective from 1 April 2012.

30. Unlike the previous legal regulation, the Act on Specific Medical Services sets also an obligatory time period which must elapse between the provision of information about the intervention, its effects and possible risks and the expression of informed consent by the patient. The elapse of this time period is one of the guarantees that the informed consent is given indeed freely, thoughtfully and without the psychic pressure of having to decide immediately.

31. In the Czech Republic, it is possible to perform the sterilization of a patient whose legal capacity is limited so that he/she is not able to consider the provision of medical services or effects of such provision (hereinafter only as "patient with limited legal capacity") only due to the medical reasons, based on fulfilment of all of the following three conditions: written approval of patient's custodian, positive statement of an expert committee, and approval of the relevant court.

32. The provider of medical services (hereinafter only as "provider") appoints the expert committee. It must always consist of three doctors specialised in the relevant field (gynaecology and obstetrics in case of sterilization of a woman, urology or surgery in case of sterilization of a man), of clinic psychologist and a lawyer. To ensure impartiality of the committee, at least 4 members of the professional committee must not be employees of or in other legal relation with the provider or be members of the providers' control body or any statutory body of the provider nor can they be associates of the provider.

[1] See Raboch, Jiří et al. "Use of Coercive Measures During Involuntary Hospitalization: Findings From Ten European Countries". Psychiatric Services. ps.psychiatryonline.org. October 2010, vol. 61, no. 10, pp.1012-1017.

33. The patient's attending physician who recommended the performance of the medical intervention can be invited to the session of the expert committee but he/she must not be present during the interview between the committee members and the patient in order to avoid the possible influencing of the patient. The patient and his/her custodian are always invited to be present at the meeting of the committee.

34. The expert committee passes the information on the character of the medical intervention, on its permanent effects and possible risks to the patient with limited legal capacity and to his/her custodian and verifies that the patient and the custodian understand well this information. In case of the patient with limited legal capacity it takes into account his/her intellectual maturity. The record on presentation of such information has to be signed by members of the committee, by the patient and the patient's custodian. The record includes the patient's opinion. When the patient is not able, due to his/her intellectual maturity, to comprehend the information or to sign the record, such fact must be stated in the record. The record is part of medical records of the patient.

35. After having discussed the request, the expert committee prepares a written statement containing its assessment of whether all conditions for performing the sterilization were met. The committee also states the period of validity of the opinion which should reflect the urgency of the performance of the medical intervention.

36. To reach a conclusion in favour of sterilization, all members of the expert committee have to agree. When the approval of all members cannot be achieved, the committee describes the reasons in its statement. The provider passes a copy of the written concluding statement to the patient's custodian.

37. The proposal of the approval of performance of the sterilization is presented to the court by the provider. The provider shall add the written consent of the patient's custodian to the proposal, the patient's opinion and the conclusion of the expert committee. If the patient is not able, with regard to his/her intellectual maturity, to express his/her opinion, the provider shall state such fact in the reasoning of the proposal.

38. Before the performance of the sterilization the attending physician is obliged to inform the patient on the character of the medical intervention, on its permanent effects and possible risks. The information has to be presented in the presence of a witness who is a medical worker. If the patient asks for the presence of another witness according to his/her choice, the provider has to allow it. The record on presentation of such information has to be signed by the attending physician, the patient, the witness or witnesses; the record is part of the medical records of the patient.

39. Adequate period has to be provided between the passing of information and the granting of approval; if the sterilization is due to medical reasons, the period shall be 7 days at least. The sterilization can be performed if the patient's custodian provides the written consent immediately before its performance.

40. A similar procedure is used for the sterilization for health reasons of a minor.

41. The above described shows that the Czech Republic largely fulfils the first part of the recommendation.

42. The Czech Republic is repeatedly criticised for non-provision of adequate remedy and compensations to victims of involuntary sterilization. We would like to stress therefore that the victims of involuntary sterilization could always refer to the courts in the Czech Republic to get the compensations and to fully use all procedural means of appeal. Until 2012, it was also possible to apply for compensation at the Ministry of Health and the Ministry was authorised to provide such compensation regardless of possible refusal of compensation claim by a court. Some victims of involuntary sterilization used their right and take their cases to the courts in the Czech Republic.

43. The above mentioned effective legal regulation, i.e. the Act on Medical Services as well as the Act on Specific Medical Services, does not contain any provision under which would only the custodian's approval (without the fulfilment of the other conditions — see the Paragraph 28) suffice to give consent to the medical intervention (note: please do not confuse with legal representative). In order to evaluate this issue at general level, the